



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2007-29320]

Operating Limitations at John F. Kennedy International Airport

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Extension to order.

SUMMARY: This action extends the Order Limiting Operations at John F. Kennedy International Airport (JFK) published on January 18, 2008, and most recently extended on September 17, 2018. The Order remains effective until October 29, 2022.

DATES: This action is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, System Operations Services, AJR-0, Room 300W, 800 Independence Avenue, SW., Washington, DC 20591, or by e-mail to: 7-awa-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this Order contact:

Bonnie Dragotto, Regulations Division, FAA Office of the Chief Counsel, AGC-250, Room 916K, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3808; e-mail Bonnie.Dragotto@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

(2) Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or

(3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

The FAA historically limited the number of arrivals and departures at JFK through the implementation of the High Density Rule (HDR).¹ By statute enacted in April 2000, operations were added at JFK through provisions permitting exemptions for new entrant carriers and flights to small and non-hub airports.² The HDR's applicability to JFK operations terminated as of January 1, 2007.³ With the AIR-21 exemptions and the HDR phase-out, some air carriers serving JFK significantly increased their scheduled operations throughout the day and retimed existing flights. This resulted in scheduled demand in peak hours that exceeded the airport's capacity and caused significant congestion and delay. In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at

¹ 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports.

² Aviation Investment and Reform Act for the 21st Century (AIR-21), Public Law 106-181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

³ *Id.*

the airport.⁴ The FAA extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009, April 4, 2011, May 14, 2013, March 26, 2014, May 24, 2016, as corrected June 21, 2016, and on September 17, 2018.⁵

Under the Order, as amended, the FAA (1) maintains the current hourly limits of 81 scheduled operations at JFK during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs)⁶ with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order.

The reasons for issuing the Order have not changed appreciably since it was implemented. Based upon experience from the 2018-2020 period, demand for access to JFK remains high and multiple new entrant and other incumbent airlines have been waitlisted for new peak period operations and retiming existing flights to higher demand hours. Many of these airlines were on a waitlist for several scheduling seasons. The average hourly flights and allocated slots in the busiest hours were generally at the limits under this Order.

The FAA has reviewed the on-time and other performance metrics for the past two years in the peak months -- May to August 2018 and 2019 -- and generally found continuing improvements relative to the same peak period in 2008. Year over year trends show a modest decrease in performance overall largely due to the closure of Runway 13L/31R for construction in 2019.⁷ The FAA has determined that the operational limitations imposed by this Order remain

⁴ 73 FR 3510 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

⁵ 74 FR 51650; 76 FR 18620; 78 FR 28276; 79 FR 16854; 81 FR 32636; 81 FR 40167; 83 FR 46865.

⁶ Also referred to herein as “slots.”

⁷ Docket No. FAA-2007-29320 includes a copy of the MITRE analysis completed for the FAA.

necessary. Notwithstanding the disruption caused by the COVID-19 public health emergency, the duration of which is uncertain, without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at JFK and at other airports throughout the National Airspace System (NAS) as flights are added or retimed into peak periods at JFK. The FAA will continue to monitor demand, performance, and runway capacity at JFK, including the effects of the COVID-19 public health emergency, to determine if changes are warranted during the effective period of this Order.⁸ The FAA, in coordination with the Office of the Secretary of Transportation (OST), will also continue to consider potential rulemaking to codify policies for slot-controlled airports.

Pending Issues

In the FAA's 2018 actions extending the JFK and LGA Orders, the FAA noted that it has received specific proposals for policy changes that would necessitate amending the Orders.⁹ Consideration of these issues is ongoing. In addition, the FAA is reviewing recent substantive amendments to the International Air Transport Association Worldwide Slot Guidelines (IATA WSG, now known as the Worldwide *Airport* Slot Guidelines or "WASG") and considering whether to implement certain changes in the United States.¹⁰ In the meantime, the FAA continues to apply version 9 of the IATA WSG (Jan. 1, 2019) to inform its slot administration decisions at JFK.¹¹

⁸ The limited waiver of the minimum slot usage requirement for JFK and LGA airports published on March 16, 2020, 85 FR 15018, and extended on April 17, 2020, 85 FR 21500, remains in effect through October 24, 2020.

⁹ See discussion of "Current Issues" in 2018 JFK Order, 83 FR at 46865, and 2018 LGA Order, 83 FR at 47065.

¹⁰ <https://www.iata.org/en/policy/slots/slot-guidelines/>

¹¹ <https://www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/wsg-edition-9-english-version.pdf>

Accordingly, the FAA is extending the expiration date of this Order until October 29, 2022. This expiration date coincides with the extended expiration date for the Order limiting operations at LGA, as also extended by action published elsewhere in this issue of the Federal Register. This JFK action incorporates ministerial changes to the terms of the Order concerning internal FAA processes, amending a provision concerning the final decision-maker in paragraph 1.c., and makes other minor edits to improve readability.

The FAA finds that notice and comment procedures under 5 U.S.C. 553(b) are impracticable, unnecessary, and contrary to the public interest, as carriers have begun planning schedules for the winter 2020/2021 season and no significant substantive changes are included in this action. For these reasons, the FAA also finds that it is impracticable and contrary to the public interest to delay the effective date of this action under 5 U.S.C. 553(d).

This Order is the equivalent of limited local rules as referenced in the IATA WSG and takes precedence over the WSG where there are differences.¹² At JFK, the FAA follows the WSG in many respects such as new entrant priority¹³ and consideration of schedule constraints such as terminal, gate, parking, customs and immigration, curfews, and similar operational factors.

Under current rules, the FAA uses an approach adapted from the WSG for reallocating available OAs at JFK.¹⁴ This includes applying priorities for new entrant airlines, the retiming of

¹² As previously indicated, the FAA is reviewing recent substantive amendments to the WSG adopted in version 10 (Aug. 1, 2019) and considering whether to implement certain changes in the United States.

¹³ Under current policy and procedures, the FAA applies the definitions for “new entrant” as set forth in the WSG version 9 (Jan. 1, 2019), which is “an airline requesting a series of slots at an airport on any day where, if the airline’s request were accepted, it would hold fewer than 5 slots at that airport on that day.”

¹⁴ In making allocation decisions, the FAA may not under its independent authority consider the markets to be served, the aircraft to be used, potential competition benefits associated with a carrier or service in particular markets, or the potential economic benefits of a particular flight.

historic slots, and allocation of remaining available capacity. The FAA also considers factors such as delays or operational performance in certain hours or periods when the allocation is above the limits in adjacent hours. In general, the FAA reviews retiming requests to move from less congested hours to more congested hours in a similar manner to a new request. New entrants may receive a higher priority in the case of competing requests. The FAA also maintains a waiting list of carrier requests that could not be accommodated in prior scheduling seasons, if requested by the initial submission deadline, and prioritizes such requests over requests for new slots submitted after the initial submission deadline. Carriers that obtain temporary slot swaps to meet their operational needs do not lose priority on the waiting list for permanent slot allocations. The priorities considered by the FAA under established policy and practice when allocating OAs on a permanent or temporary basis are set forth in paragraph 11 of the Amended Order.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order continues the process for assigning operating authority to conduct an arrival or a departure at JFK during the affected hours to any certificated U.S. air carrier or foreign air carrier. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and with operating authority from FAA under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same

designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Vice President, System Operations Services, in coordination with the Chief Counsel of the FAA, is the final decision maker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order took effect on March 30, 2008, and will expire October 29, 2022.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103, and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as otherwise authorized by the FAA based on historic precedence, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if the Administrator determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour

within that period. Except as provided in paragraph 7, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any adjusted arrival or departure. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph 7.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph 7.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. The FAA considers the following factors and priorities in allocating Operating Authorizations, which the FAA has determined are available for reallocation—

- a. Historical requests for allocation of an Operating Authorization in the same time;
- b. New entrant status;
- c. Retiming of historic Operating Authorizations;
- d. Extension of a seasonal Operating Authorization to year-round service;
- e. The effective period of operation;
- f. The extent and regularity of intended use with priority given to year-round services;
- g. The operational impacts of scheduled demand, including the hourly and half-hour demand and the mix of arrival and departure flights; and
- h. Airport facility constraints.

Any carrier that is not approved for allocation of an Operating Authorization by the FAA may request it be placed on a waiting list for consideration should an Operating Authorization in the requested time become available during that scheduling season.

12. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice

unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

13. The FAA may enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). The FAA or Department of Justice also could file a civil action in U.S. District Court, under 49 U.S.C. 46106 or 46107, respectively, seeking to enjoin any carrier from violating the terms of this Order.

14. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, D.C. on August 18, 2020.

Virginia Boyle,
Deputy Vice President,
System Operations Services.

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